

**PREGRANTED PROBATE MATTERS FOR DEPT. 201, FOR May 20, 2014**

RP11602601	ERIC BIEHL
RP13687046	BENELLA BOULDIN
RP13690638	VIRGINIA CEPEDA
RP13691667	ROBERT RAABE
RP14716545	HELEN ROCHE
RP14716744	SYLVIA McGEHEE
RP14716751	JUNG LEE
RP14716769	DEBORAH CLARK
RP14716886	SCALAPINO TRUST
RP14716938	PATRICIA HUBBARD
RP14720412	LILLIAN MORGAN

**CONTINUANCES ALREADY GRANTED**

RP13679437	KEOKO GRANT – 7/22/14
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**CONTINUANCES GIVEN BY THE COURT**

*The following matters are continued on the court's own motion for the issues raised by the probate examiners to be addressed. All documents addressing the issues raised in the probate examiners notes are to be filed five court days prior to the continued hearing dates.*

RP05197165	CONSTANCE PATTERSON – 7/16/14
RP09439944	LELTON MUSGROVE – 7/15/14
RP10501365	JOHN KEMP – 7/15/14
RP13692830	ROBERT BLACKBURN – 7/15/14
RP14716541	LORRAINE FARIAS – 6/24/14
RP14716543	WILLIAM JURIKA – 6/17/14
RP14716616	PEROZ HEIDARIFAR – 7/15/14
RP14706625	SURETHA WILLIAMS – 7/14/14
RP14716847	PAGGY MCDONALD-RVERA – 6/25/14
RP14716925	KIRBY TRUST – 6/11/14 @ 10:00 a.m.
RP14719866	BILLY SMALL – 6/24/14
RP14720234	KOHL TRUST – 7/16/14 @ 10:00 a.m.
RP14720607	ROBERT PAYNE – 6/25/14

**CONTINUANCES GIVEN BY THE COURT UNLESS THE ATTORNEY CAN CORRECT THE PROCEDURAL DEFECTS IN COURT**

**DROPS:**

RP13700468

MICHELLE STEFANAC

**TENTATIVE RULING:**

RP13-678568

JOSEPH VARELA (Demurrer)

The Demurrer as to the second, third and fourth causes of action under Penal Code section 368 is **SUSTAINED WITH LEAVE TO AMEND**. The Petitioner has failed to allege her standing to bring a cause of action under Penal Code section 368 in this action .

The Demurrer as to the sixth cause of action under Probate Code section 850 is **SUSTAINED WITH LEAVE TO AMEND**. The Petitioner has failed to allege which subsection of Probate Code section 850 applies, and what property is at stake.

The Demurrer as to the second, third, and fourth causes of action on the grounds that the Petitioner has failed to satisfy the elements of the elder abuse standards is **OVERRULED**. The Petitioner has sufficiently alleged the second, third and fourth causes of action under the Elder Abuse Act.

Under the Elder Abuse Act, “heightened remedies are available to plaintiffs who successfully sue for dependent adult abuse. Where it is proven by clear and convincing evidence that a defendant is liable for neglect or physical abuse, and the plaintiff proves that the defendant acted with recklessness, oppression, fraud, or malice, a court shall award attorney fees and costs. Additionally, a decedent’s survivors can recover damages for the decedent’s pain and suffering.” (*Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 88.)

Abuse of an elder or a dependent adult is defined under the Act as “[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering” (§ 15610.07, subd. (a)) or “[t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering” (*id.*, at subd. (b)). “Neglect includes the failure to assist in personal hygiene, or in the provision of food, clothing, or shelter; the failure to provide medical care for physical and mental health needs; the failure to protect from health and safety hazards; and the failure to prevent malnutrition or dehydration. (§ 15610.57.) Physical abuse means, inter alia, assault, battery, prolonged deprivation of food or water, unreasonable physical restraint, or sexual assault. (§ 15610.63.)” (*Sababin, supra*, 144 Cal.App.4th at p. 88.)

The liberal construction of the pleading at the demurrer stage discloses facts sufficient to allege the second, third and fourth causes of action within the meaning of the Elder Abuse Act.

Whether defendant’s conduct amounted to “recklessness, oppression, fraud,

or malice” comes into play *after* the pleading stage and only for the purpose of determining whether heightened remedies will apply.

Therefore the Demurrer as to the second, third, and fourth causes of action on the grounds that the Petitioner has failed to satisfy the elements of the elder abuse standards is **OVERRULED**.